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10/064,637	08/01/2002	Andrew J. Boron	716139.99	5337

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BLACKWELL SANDERS PEPER MARTIN LLP
720 OLIVE STREET
SUITE 2400
ST. LOUIS, MO 63101

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,637

Applicant(s)

BORON, ANDREW J.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

This final Office action is in response to the amendment filed August 25, 2003 (Paper No. 4).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-6 and 18-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 4 recites the limitation "rack subassembly" in lines 5 and 6 of claim 3 and line 5 of claim 4. There is insufficient antecedent basis for this limitation in the claims. It is noted that claim 1 sets forth "units" not "rack subassemblies".

Claims 18-22 recite the limitations "the base unit" and "the upper unit", throughout. There is insufficient antecedent basis for this limitation in the claim. It is noted that with the addition of the word "subassembly" in lines 2 and 7 of claim 18, all occurrences of "the base unit" and the "the upper unit", found throughout claims 18-22, lack proper antecedent basis.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 11, 12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Flum '796.

Flum '796 discloses a display rack (see Figure 20) comprising a first unit (lower portion of Figure 20) having a pair of first front upright support members (158) and being adaptable to rest on the floor (at 176) and a pair of first rear upright support members (158); a second unit (top of Figure 2) having a pair of second front upright support members (154 and 156) and a pair of second rear upright support members (154 and 156) the second unit being adaptable to be supported by the first unit; connectors (generally at 160 and 142) cooperating with the first and second support members for removably attaching the first and second units together whereby the connectors include a plurality of stakes (160) associated with the second support members and sockets (near 142) associated with the first support members; a plurality of shelf members (146), carried vertically by each of the units, and inclined downwardly, with each of the first and second units whereby each shelf comprises a generally upwardly facing product support (at 168); the display rack having front and rear *portions*, i.e., the sides of the display rack are considered to define portions; and the first unit, i.e., the base unit, comprising at least one brace member (at 148) secured to a rear portion thereof.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796, alone.

The claim differs from Flum '796 in requiring the connectors to define the first support members having stakes and the second support members having sockets.

Although Flum '796 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Battaglia *et al.* '307 (Figure 1).

Flum '796 discloses the rack as advanced above.

The claims differ from Flum '796 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) and including at least one removable display panel (claim 6).

Battaglia *et al.* '307 (Figure 1) teach a rack comprising front (24) and rear (32) support members and a header assembly (110) comprising connector members (unnumbered - rounded corners of 110, below 112) which are cooperatively engageable with the support members whereby information can be stored therein (see column 6, lines 6-9).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly as taught by

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Battaglia *et al.* '307 (Figure 1), for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Battaglia *et al.* '307 (Figure 1A).

Flum '796 discloses the rack as advanced above.

The claims differ from Flum '796 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) whereby the connector members define sockets for receiving stakes of the support members.

Battaglia *et al.* '307 (Figure 1A) teach a rack comprising front (24) and rear (32) support members and a header assembly (26) which comprising connector members defining stakes (30) disposed in receiving sockets (at 28).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly, as taught by Battaglia *et al.* '307, with the header assembly comprising sockets (see MPEP 2144.04(VI)(A)), for ease in assembly.

Claims 7, 8, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Lee '170.

Flum '796 discloses the rack as advanced above.

The claims differ from Flum '796 in requiring the shelf members to include product channels (claims 7 and 13), a first member including a product support surface and a second

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member defining spaced wire members forming guide rails that is removably attached to the first member (claim 8).

Lee '170 teaches a display rack comprising shelf members which include a first member (at 120) including a product support surface and a second member (at 30) defining spaced wire members forming guide rails that is removably attached to the first member whereby product receiving channels are formed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Flum '796 with first and second members forming product channels, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

Claims 9, 10, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Bustos '191.

Flum '796 discloses the display rack as advanced above.

The claims differ from Flum '796 in requiring a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each unit.

Bustos '191 teaches a display rack comprising side shelf members (20) that are removably attachable (at 13) to support members (11b).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Flum '796 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

Claims 18-20 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 in view Battaglia *et al.* '307 (Figure 1), Lee '170, and Bustos '191.

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Flum '796 discloses the rack as advanced above.

The claims differ from Flum '796 in requiring: (a) a header assembly including a plurality of connector members engageable with at least some of the second support members and including at least one removable display panel (claim 18), (b) the shelf members to include a removably attached product organizer (claim 18), (c) at least one side shelf members removably attachable in a cantilever manner to some of the support members of each unit (claim 18), and (d) the connectors to define the first support members having stakes and the second support members having sockets (claim 19).

With respect to (a), Battaglia *et al.* '307 (Figure 1) teach a rack comprising front (24) and rear (32) support members and a header assembly (110) comprising connector members (unnumbered - rounded corners of 110, below 112) which are cooperatively engageable with the support members whereby information can be stored therein (see column 6, lines 6-9).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly as taught by Battaglia *et al.* '307 (Figure 1), for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

With respect to (b), Lee '170 teaches a display rack comprising shelf members which include a first member (at 120) including a product support surface and a second member (at 30) defining spaced wire members forming guide rails that is removably attached to the first member whereby product receiving channels are formed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Flum '796 with first and

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second members forming product channels, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

With respect to (c), Bustos '191 teaches a display rack comprising side shelf members (20) that are removably attachable (at 13) to support members (11b).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Flum '796 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

With respect to (d), although Flum '796 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flum '796 in view Battaglia *et al.* '307 (Figure 1), Lee '170, and Bustos '191 as applied to claims 18-20 and 23-25 above, and further in view of Battaglia *et al.* '307 (Figure 1A).

The claims differ from the above references in requiring the upper end portions of the upper unit to comprise stakes and the lower portions of the header assembly to include sockets (claim 21) or the upper end portions of the upper unit to comprise sockets and the lower portions of the header assembly to include stakes (claim 22).

Battaglia *et al.* '307 (Figure 1A) teach a rack comprising front (24) and rear (32) support members and a header assembly (26) which comprising connector members defining stakes (30) disposed in receiving sockets (at 28).

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Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly, as taught by Battaglia *et al.* '307, with the header assembly comprising sockets (see MPEP 2144.04(VI)(A)), for ease in assembly.

Response to Arguments

Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting "pair of first front", "pair of first rear", etc. in claims 1, 12, and 18.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen
October 20, 2003

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looping initial "D".

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600